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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: WesternWorld Services, Inc. d/b/a The Video
Tape Company--Reconsideration

File: B-243808.2

Date: July 3, 1991

Patricia R. Wittle, Esq., Kirkpatrick & Lockhart, for the
protester.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Request for reconsideration of decision dismissing as untimely
protest of cancellation of solicitation is denied where
initial, agency-level protest challenging cancellation was
filed more than 10 working days after protester received
notice of cancellation.

DECISION

WesternWorld Services, Inc. d/b/a The Video Tape Company
(VTC), requests reconsideration of our decision, WesternWorld
Servs., Inc. d/b/a The Video Tape Co., B-243808, May 14,
1991, 91-1 CPD ¶ , in which we dismissed its protest of the
cancellation of invitation for bids (IFB) No. MDA902-91-B-
0001, issued by the Armed Forces Radio and Television Service
for videotape duplication services.

We deny the request.

In its protest, VTC alleged that it submitted the low,
responsive bid, but that the agency canceled the IFB on the
basis that only one responsive bid was received and that the
government's requirements had changed significantly. VTC
learned of the agency's action by a solicitation amendment
dated March 7, 1991. On April 3, VTC filed an agency-level
protest against the cancellation; the agency denied that
protest by letter dated April 12. On April 15, VTC received a
copy of a revised IFB, which contains some requirements
different from those stated in the canceled IFB. On April 26,
VTC protested to our Office, arguing that the changes in the
government's requirements were not significant enough to
warrant cancellation of the former IFB after bid opening, and
that the agency therefore should make award to VTC under the

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canceled IFB. VTC also suggested that the agency's actual reason for canceling and reissuing the IFB was to afford the incumbent contractor, whose late bid had been rejected, another opportunity for award.

We found that VTC's protest of the cancellation was untimely filed. Our Bid Protest Regulations provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office, i.e., not later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) and (3) (1991). Since the record did not indicate when VTC received the March 7 amendment canceling the IFB, we presumed that the amendment was mailed on March 7 and that it was received within 1 calendar week, that is, by March 14. See TLC Moving, Inc.--Recon., B-234850.2, Apr. 11, 1989, 89-1 CPD ¶ 372. As VTC did not protest the cancellation to the agency until April 3, more than 10 working days after it presumably received the amendment, we concluded that its subsequent protest to our Office was untimely under the above standard. See Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

In dismissing the protest, we rejected an argument by VTC that its protest to our Office was timely because it did not know until April 15, when it received the revised IFB, that the changes in the agency's requirements did not provide a proper basis for cancellation of the IFB after bid opening. Since VTC's agency-level protest, based on the March 7 amendment, contained essentially the same protest grounds as its protest to our Office, it was clear to us that VTC knew of its basis of protest when it received the March 7 notice.

In its reconsideration request, VTC contends that our decision mischaracterized its protest as a protest against the cancellation of the first IFB. VTC asserts that it actually was protesting the improper resolicitation of virtually identical requirements in the second IFB. VTC's protest clearly was against the cancellation. VTC alleged not that the new IFB itself was deficient in some way, but that the terms of the new IFB allegedly show that there was no reason to cancel the original IFB. VTC's attempt to characterize its protest in a manner that it apparently believes would render it timely does not change the essence of the protest.

VTC argues that its protest to our Office was timely since VTC could not have known until the new IFB was issued that the allegedly significant changes in the agency's requirements were not significant enough to warrant cancellation of the IFB. We note that VTC apparently did not consider the agency's original cancellation notice too speculative a basis


for protest when it filed its April 3 agency-level protest challenging the cancellation. In any case, a protester is responsible for promptly pursuing the information which reveals the basis for protest. J&J Maintenance, Inc., B-223355.2, Aug. 24, 1987, 87-2 CPD ¶ 197. It is our view that VTC, as the apparent successful bidder deprived of the award by the agency's decision to cancel the IFB, had an obligation under this rule to promptly seek information concerning the reasonableness of the cancellation. VTC made no attempt to ascertain the nature of the unspecified changes in the agency's requirements, despite the fact that the agency cited those changes as the basis for not proceeding with an award to VTC. Having failed to do so, its argument now that the changes the agency considered significant in fact are not is untimely.

In a similar vein, VTC asserts that any protest filed prior to the issuance of the new IFB would have been premature. VTC is incorrect. Had VTC timely sought the agency's more detailed basis for cancellation, and obtained that information, the fact that the agency had not yet incorporated its changed requirements in an IFB would not have precluded our consideration of whether those proposed changes constituted sufficient justification for the cancellation.

VTC cites our decision Groathouse Constr., B-235236; B-235250, July 13, 1989, 89-2 CPD ¶ 44, in support of its position that its protest is timely. In Groathouse, the agency had canceled an IFB after bid opening on the basis that the prices received were unreasonably high; on resolicitation, the agency made award to a bidder whose price was only slightly lower than Groathouse's bid under the original IFB. Groathouse then challenged the cancellation of the first IFB, alleging that the award price under the second IFB established that Groathouse's bid price under the first IFB was not unreasonable. We held that the protest was timely filed within 10 days after bid opening because it was based on the results of the bidding, which did not exist before bids were opened. The rule in Groathouse does not apply here. Unlike the protest in that case, VTC's protest was not based on information that did not exist, and that the protester therefore could not obtain, before the new IFB was issued. Rather, VTC's protest was based on the agency's changed requirements, the significance of which could and, we have found, should have been determined by the protester at the time of the cancellation.

We conclude that VTC has neither established that our decision was based on an error of fact or law, nor presented new

information warranting its reversal or modification.
Therefore, the request for reconsideration is denied.
4 C.F.R. § 21.12; R.E. Scherrer, Inc.--Recon., B-231101.3,
Sept. 21, 1988, 88-2 CPD ¶ 274.


Ronald Berger
Associate General Counsel